

REMARKS

Claims 2, 29 and 33 have been amended. Claims 3 and 13 were previously cancelled. Claims 1, 19-28 and 30 were previously withdrawn. With entry of this amendment, claims 2, 4-12, 14-18, 29, and 31-33 will be pending.

Independent Claims 2, 29 and 33 and Dependent Claims 4-12, 14-18 and 31-32

Claims 2, 4-12, 14-18, 29 and 31-33 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Particularly, the Examiner contends that the limitation “biohydrolyzable amide, ester or imides of 2-carboxy-2-phosphinico derivatives” is indefinite because it is unclear as to the meets and bounds of the term “hydrolyzable.” Page 3, paragraph 1. The Examiner has requested a clarification.

The Applicant has removed the term “biohydrolyzable” from claims 2, 29 and 33. The Applicant is not conceding that the term “biohydrolyzable” is indefinite. The term has been removed from the claim language solely to expedite allowance of the application. Accordingly, reconsideration and withdrawal of the rejection to claims 2, 4-12, 14-18, 29 and 31-33 under 35 U.S.C. § 112 are respectfully requested.


Claim 33 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,171,331 to Biddlecom (“Biddlecom”).

Claim 33 has been amended to recite the same subject matter as original claim 13, except that the term “biohydrolyzable” has been deleted. Again, this term has been removed from the claim language solely to expedite allowance of the application. The Examiner objected to original claim 13 as being dependent upon a rejected base claim, but indicated it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It should be noted that the phrase “wherein R¹ and R³ are not both oxygen-containing moieties” was added to claim 13 later in prosecution, but has been omitted from amended claim 33 in the present Amendment. Additionally, the phrase “a structure selected from the group consisting of” has been deleted to conform with amendments to the structures. Allowance of amended independent claim 33 is respectfully requested in view of the Examiner’s indication that cancelled claim 13 contained patentable subject matter.

CONCLUSION

In view of the foregoing, claims 2, 4-12, 14-18, 29, and 31-33 are allowable. Reconsideration and allowance of the application are respectfully requested. Should any issues remain precluding allowance of the application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. J. Hartwig', with a long horizontal stroke extending to the right.

Gregory J. Hartwig
Reg. No. 46,761

Docket No.: 028193-9011-00
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108

(414) 271-6560